IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5829 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAVNITLAL P SHAH

Versus

STATE OF GUJARAT

Appearance:

MR PM RAVAL for Petitioner

Mr S. K.Patel, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2 to 4

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 28/04/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for quashing and setting aside the order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat

on 7th December, 1989 (Annexure `D') in Revision Application and restoring the order passed by the District Development Officer, respondent No.2 on 30th May, 1981/ 15th June, 1981 (Annexure `C').

The case of the petitioner was that he is resident of town Balasinor . He is having his residential house in Balasinor which is situated in plot bearing survey No. 4957 of Balasinor. There was existing a strip of land admeasuring 27.26 sq.mts. It was irregular shape of land and since it was adjoining to the house of the petitioner, he made an application to respondent No.2 to grant the said land. Respondent No.2, initially, rejected the application which was challenged before the Special Secretary who allowed the revision application and remanded the matter. After remand, respondent No.2 passed an order on 15th June, 1981 (Annexure `C') wherein, it was specifically observed that looking to the location of the land in question, it was clear that it wad adjoining to the residential premises ofthe petitioner and that as per the resolution issued by the Revenue Department of the Government dated 16th September, 1970, such piece of land can be disposed of otherwise than by holding public auction. Accordingly, on the basis of the price fixed as per the report of the Deputy Town Planner, the land was sold to the petitioner at the rate of Rs. 140/- per sq.mt. on certain terms and conditions.

It appears that one Gajendrabhai Manilal Modi, respondent No.3 filed a revision application before the Additional Chief Secretary who allowed the revision application on 7th December, 1989 by holding that the order passed by respondent No.2 was illegal, null and void. Said order is challenged in the present petition.

Rule was issued on August 9, 1990 and interim relief in terms of para 16 (C) was granted. Para 16 (C) reads as under :

> "That pending admission, hearing and final disposal of the petition be restrained respondent No.2 and 4 or subordinate officers, servants or agents of the respondents No.2 or 4 from demolishing and/or removing the construction erected by the petitioner in the land bearing city survey No. 4957 of town of Balasinor and further be pleased to restrain to respondent No.2 and 4 or their subordinate officers, servants or agents, from disturbing the petitioner from enjoying the said property and disturbing

possession of the petitioner in any manner whatsoever".

Today, the matter is taken up for final hearing. I have heard the parties. Respondents Nos. 2 to 4, though served, did not appear.

Contention of the learned counsel for the petitioner is that there is an error of law apparent on the face of record committed by the Additional Chief Secretary in holding that the order passed by respondent No.2 was null and void or contrary to law. He submitted that it is not disputed by and between the parties that the land in question was a strip of land and it was located adjoining to the house which was occupied and owned by the petitioner. It was specifically observed in the order passed by respondent No.2 that as per Government Resolution, dated 16th September, 1970, such land can be disposed of in favour of an owner having adjoining land or property. If such decision has been arrived at by respondent No.2 in accordance with a Government resolution, it cannot be said that it was contrary to law. Additional Chief Secretary has committed an error in observing that the order was illegal and void.

Though notices were served to respondents Nos. 2 to 4, nobody appeared. In view of the fact that the land was adjoining to the premises possessed, occupied and owned by the petitioner and that the land was 27.26 sq.mts. in area, it could have been disposed of in accordance with the said resolution issued by the Revenue Department of the Government on 16th September, 1970. By granting the land in favour of the petitioner, no illegality was committed by respondent No.2. Additional Chief Secretary, in these circumstances, could not have interfered with the said order, looking to the smallness of size of land.

For the foregoing reasons, petition deserves to be allowed and is accordingly allowed. Order at Annexure `D' passed by the Additional Chief Secretary is hereby quashed and set aside and the order passed by respondent No.2 at Annexure `C' is hereby restored. Rule is made absolute. No order as to costs.

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parekh